Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-358

FARRELL LINES INCORPORATED,

Petitioner,

—against—

ANTHONY CANIZZO, UNIVERSAL TERMINAL AND STEVEDORING CORP., and FRANK J. HOLLERAN, INC.,

Respondents.

BRIEF OF RESPONDENT, FRANK J. HOLLERAN INC., IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Statute Cited

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Other Authority Cited

U.S. Code Congressional and Administrative News, 1972, p. 4699 3

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Opinion Below

The opinion of the United States Court of Appeals, dated June 2, 1978, has been set forth in petitioner's brief.

Statutes Involved

The petitioner has set forth Sections 905(b), 941(a) of the Longshoremen and Harbor Workers Compensation Act, Title 33 U.S.C. 901 et seq. In addition, he has also cited 29 C.F.R. 1918.19(c).

POINT I

The decision below does not conflict with the decision in the *Cox* case.

The *Canizzo* opinion can readily be distinguished from the *Cox* decision which has now been officially reported *Cox* v. *Flota Mercante Grancolombiana, S.A.*, 577 F. 2d 798 (1978). The control of the area where Cox worked was wholly under his employer's care. Canizzo, however, was injured when he was using a walkway or alleyway which was used not only by himself and his co-workers, but also other people working on the vessel.

At page 802 in the *Cox* case the Court stated, "In either case, the situation was known to the stevedore. The stevedore from its inception had complete control of the unloading operation."

Then later on, on the same page, the Court held, "It was the stevedore which had exclusive control of the gangs and how, when and where they worked."

There is nothing in the *Canizzo* case which bears out any contention that Canizzo's employer had direct knowledge of the existence of the hazard over which Canizzo fell and, in fact, the District Court found the vessel negligent in not removing the open and obvious condition which caused the injury to Canizzo.

On page 8a of the petition, the Circuit Court states, "The existence of a substantial area of grease in a narrow passageway, which should have been known to the ship's personnel, made more dangerous by the positioning by the ship's personnel of the cluster lights and wires upon the greasy areas supports the finding of negligence on the part of the ship and justifies the plaintiff's judgment even under the new dispensation.

In the reading of the opinion of the Court of Appeals as well as the District Court, it is quite clear there was a finding of negligence on the part of the vessel and the District Court found, "No negligence by Holleran's lashers was shown." (p. 28a).

POINT II

Section 905(b) of the Longshoremen and Harbor Workers Act clearly bears a claim for indemnity or contribution by the ship against the plaintiff's employer.

In amending the Longshoremen and Harbor Workers Compensation Act, the Congress has set forth in the legislative history contained in 1972 U.S. Code Congressional and Administrative News, page 4699 et seq. intended to shield the employer from indemnity claims by the ship owner as the employer or stevedore had agreed to increase the Workers Compensation Benefits.

The Statute makes no distinction between the various services supplied by the employer as contended by the ship's counsel on page 6 of the petition.

There is no case cited from either the District Court or any of the Circuit Courts which would substantiate the ship's attorney's interpretation of the Statute as set forth on page 6 of the petition.

CONCLUSION

It is respectfully submitted that the petitioner has failed to sustain the burden required to invoke the Court's jurisdiction pursuant to Supreme Court Rule 19, and the petition for a Writ of Certiorari should be denied in all respects.

Respectfully submitted,

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